IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14036 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHARTI (CHANDKHEDA) CO-OP HOUSING SOCIETY LTD

Versus

DY.COLLECTOR (STAMP DUTY VALUATION)

Appearance:

1. Special Civil Application No. 14036 of 2004

MR DG CHAUHAN for Petitioner No. 1

Mr. PD Bhate, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 10/12/2004

ORAL JUDGEMENT

With the consent of the parties the matter is taken up for final hearing today as Rule is already issued earlier which was made returnable on 30th November 2004.

2. In this petition under Article 226/227 of the

Constitution of India, the petitioner has challenged the legality and validity of the order passed by the respondent dated 10/15.7.2002 with regard to instrument Registration No. 4002/99 dated 12th August 1999 and Attachment Notice dated 17th August 2004. The petitioner society purchased the land in question by registered sale deed dated 12th August 1999 and the same was presented before the Sub-Registrar, Gandhinagar on 12th August 1999 which was registered under Registration No.4002/99. It appears that the Sub-Registrar, Gandhinagar was of the opinion that the valuation which is fixed by the petitioner is not the proper market value and he referred the matter to the respondent for determination of the market value as required under Section 32-A of the Bombay Stamp Act, 1958 ["the Act" for short]. A notice came to be issued under Rule 4 of the Bombay Stamp [Determination of Market Value of Property] Rules, 1984 ["the Rules" for short] dated 15/16th April 2002 determining provisional market value of the property in question at Rs. 74,33,646 against Rs. 3,63,200 fixed by the petitioner. The petitioner was directed to show cause and was directed to produce evidence in support of the market value of Rs. 3,63,200 which was fixed by him and on the basis of which the stamp duty was claimed for payment. It is the contention on behalf of the petitioner that initially the notice dated 15/16th April 2002 was served upon the ex-Chairman of the petitioner society who did not take care and/or drew the attention of the new Chairman and therefore nobody could remain present before the respondent and/or no reply could be filed. However, considering the fact that there is no reply filed by the petitioner society and nobody was present on 29.4.2002, on the basis of the Jantri with regard to the area in question of the relevant year the respondent passed the impugned order dated 10th July 2002 determining the market value of the land at Rs. 74,33,646 and accordingly the petitioner is directed to pay an amount of Rs. 7,06,965 towards deficit stamp duty, and Rs. 250 by way of penalty. The aforesaid order is the subject matter of the present petition under Article 226/27 of the Constitution of India.

3. Shri DG Chauhan, learned advocate appearing on behalf of the petitioner has submitted that the impugned order dated 10th July 2002 is in violation of principles of natural justice as the petitioner was not given sufficient opportunity. He has further submitted that in fact no notices have been issued by the petitioner society and even the impugned order dated 10th July 2002 was also not served upon the petitioner. On merits also he has submitted that exercise of power by the respondent

is beyond reasonable period without there being any justification of delay, and even the procedure which is required to be followed under Rule 4 of the said Rules is not followed. He has further submitted that even in the impugned order nothing has been mentioned on what basis the market value of the land is fixed at Rs. 74,33,646 and therefore requested to allow the present Special Civil Application.

4. An affidavit-in-reply is filed on behalf of the respondent. It is stated in the affidavit-in-reply that in fact the notice dated 15/16th April 2002 was served upon the Chairman of the petitioner cooperative society. However as nobody remained present on behalf of the petitioner society and no reply was filed, considering the Jantri and considering the fact that the market value of the land was fixed at Rs. 239 per sq.mtr. against the market value of more than RS. 6000 per sq.mtr. the impugned order has been passed.

5. Heard the learned advocates appearing for the parties. It is the case of the petitioner that the notice was served upon the ex-Chairman of the petitioner society who had not taken proper care and did not inform and drew the attention of the incumbent Chairman and therefore nobody could remain present on behalf of the petitioner before the respondent. Shri Chauhan, ld. advocate appearing for the petitioner has submitted that if the matter is remanded on payment of some reasonable costs, in the facts and circumstances of the case, more particularly in view of the fact that against the valuation fixed by the petitioner at Rs.3,63,200, the market value of the land is fixed at Rs. 74,33,646, then it will meet the ends of justice. It also appears that the procedure which is required to be followed under Rule 4 of the said Rules is not followed. In the impugned order dated 10th July 2002, except the factum of considering Jantri,nothing further has been mentioned. Nothing has been mentioned on what basis the market value of the land in question is fixed at Rs. 74,33,646. In fact along with the notice under Rule 4 of the Rules the respondent is required to inform the petitioner the basis on which the provisional market value is fixed and which requirement is not followed as evident from the notice dated 15/16th April 2002. Therefore, it cannot be said that the petitioner was given sufficient opportunity to meet with the basis upon which the respondent proposes to fix the market value at Rs. 74,33,646.

6. For the reasons stated hereinabove, without deciding the question on merits with regard to fixation

of the market value by the respondent at Rs. 74,33,646, and considering the fact that in the impugned order nothing has been mentioned on the basis of which it came to be passed; the fact of non-supply of particulars based on which the provisional market value was fixed at Rs. 74,33,646; and the fact of non-following of procedure required to be followed under Rule 4 of the said Rules, the impugned order passed by the respondent is required to be quashed and set aside and the same is hereby quashed and set aside. The matter is, therefore, remanded to the respondent for passing an order afresh in accordance with law and on merits after giving an opportunity of hearing to the petitioner. As agreed by the petitioner, the petitioner will appear before the respondent on 27th December 2004 at the first instance and thereafter the respondent may fix any other date and inform the petitioner with regard to the next date, if any, by taking his signature so that the question with regard to service of further notice may not arise.

7. Rule is made absolute to the aforesaid extent. The petitioner is directed to pay an amount of Rs. 5000 towards costs to the respondent authority within the period of 15 days from today. On deposit of the said amount, the respondent shall proceed with the proceedings. Direct service is permitted.

[M.R. Shah, J.]

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